

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

Jurisdictional Separations Reform and
Referral to the Federal-State Joint Board

CC Docket No. 80-286

**COMMENTS OF THE PEOPLE OF THE STATE OF
CALIFORNIA AND THE PUBLIC UTILITIES
COMMISSION OF THE STATE OF CALIFORNIA**

The People of the State of California and the Public Utilities Commission of the State of California (“California” or “CPUC”) hereby respectfully submit these comments in response to the Public Notice, released on December 20, 2001, by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY

On December 19, 2001, the State Members of the Federal-State Joint Board on Separations (“Joint Board”) filed a glide path policy paper outlining a number of proposed options for comprehensive reform of the Commission’s Part 36 jurisdictional separations rules.¹ California appreciates the Joint Board’s efforts to articulate seven proposed options or jurisdictional alternatives and to assess their strengths and

¹ “Options for Separations: A Paper Prepared by the State Members of the Separations Joint Board,” CC Docket No. 80-286, filed December 19, 2001 (“hereafter, “paper” or “glide path paper”).

weaknesses in the paper. The seven ‘glide path’ options for comprehensive separations reform that the State Members of the Joint Board have identified are the following:

1. Option 1: Extend the Freeze. This option proposes to continue the interim freeze of the Part 36 category relationships and jurisdictional allocation factors on an annual basis.
2. Option 2: Separate Traffic-Sensitive Costs with Fixed Allocators. Currently, non-traffic sensitive loop costs are separated using fixed allocators, and traffic-sensitive costs are allocated to the jurisdictions based on relative-usage factors (such as Dial Equipment Minutes (DEM) and Subscriber Line Units (SLU)). This option proposes that traffic-sensitive costs be separated using fixed allocators, which could be set nationally, regionally, or by study area.
3. Option 3: Total Company Revenue Requirement. Under this proposal, carriers would not report costs and traditional cost studies would not be performed. Rather, carriers would develop their interstate revenue requirements based on a formula or model similar to the “average schedule” process used for small carriers. States would set their intrastate rates so that a carrier’s unseparated revenues meet its revenue requirement for regulated services.
4. Option 4: Redesign the Separations Process to Account for Packet Switching and Competition. This option attempts to account for two major changes in the telecommunications industry: (1) the growth of packet-based networks; and (2) the increasing number of unregulated “competitive” services being offered by incumbent carriers. This option proposes that a new separations mechanism be designed to distinguish packet-switched and circuit-switched services, and also recognizes the existence of broader categories of unregulated services.
5. Option 5: Facilities-Based Separations. This option proposes to simplify the separations process by directly assigning telecommunications equipment to either the state or federal jurisdiction, based upon the location of that equipment in the network. A point of demarcation between the state and federal jurisdictions (for example, the tandem point) would be selected, and all facilities on each side of that point, and their respective costs, would be assigned to the state or federal jurisdiction. This proposal would have impacts upon rate design and universal service, and the glide path paper discusses these impacts in some detail.
6. Option 6: End of Separations. This option contemplates the complete removal of the federal-state jurisdictional separations process and identifies two scenarios under which separations could be abolished:

One State Jurisdiction. Pricing policy would be assigned to the states, subject to general Commission guidelines for all relevant areas. National programs such as the universal service support mechanism and local number portability would remain under the federal jurisdiction.

One Federal Jurisdiction. The FCC would be responsible for pricing policy and for setting all retail rates for services currently subject to separations.

7. Option 7: Competition Overtakes Regulation. Under this proposal, the Commission would relieve incumbent carriers that are facing effective competition for all regulated services from cost-based rate regulation in both jurisdictions. This option anticipates competition to develop to such an extent that the separations system might be eventually eliminated entirely. It specifically gives incumbent carriers the option to request exemption from rate regulation and then from separations. The debatable point here is the conditions under which companies would be exempt from regulation. The paper specifically calls for comments on what these conditions might be.

California has already submitted comments and reply comments in this docket on three occasions in the past five years and those comments have addressed most of the 'glide path' options. CPUC hereby incorporates by reference the comments it made previously in this docket and will focus here on Options 4 and 5, which it believes are the only viable options for separations reform. The remaining options are not viable for the reasons discussed in California's previously-filed comments.

Options 4 & 5 are potentially viable options for separations reform. The glide path paper, however, only indicates the general methodology that could be adopted under these options, leaving for a later date detailed development of the specific proposals. California urges the FCC to consider these two options for a more focused debate and to fully elaborate on the specific details of how the FCC plans to implement them in the near future.

II. BRIEF PROCEDURAL HISTORY AND CALIFORNIA'S COMMENTS

FCC initiated this proceeding with a Notice of Proposed Rulemaking (“NPRM”)² to review jurisdictional separations procedures (Part 36) and to ensure that they meet the objectives of the Telecommunications Act of 1996. California submitted comments in response to the NPRM on December 10, 1997.³

The Federal-State Joint Board on Separations issued a Recommended Decision and the FCC released a Public Notice seeking comment on the Joint Board's Recommended Decision on August 15, 2000. In response to this notice, California filed Comments on September 26, 2000⁴ and Reply Comments on October 10, 2000.⁵ The FCC issued a Report and Order on May 22, 2001, freezing the Part 36 separations rules from July 1, 2001, through June 30, 2006, or until the FCC had completed comprehensive separations reform, whichever comes first.⁶

The glide path paper is a positive step towards comprehensive reform and the CPUC takes this opportunity to reiterate and reference the comments it made earlier with the intention of narrowing down the set of feasible 'glide path' options.

² *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, FCC 97-354, (released October 7, 1997). (*NPRM*)

³ Comments of the People of the State of California and the California Public Utilities Commission, NPRM, CC Docket No. 80-286, December 10, 1997 (*CPUC-NPRM comments*)

⁴ Comments of the People of the State of California and the California Public Utilities Commission, Joint Board Recommended Decision, CC Docket No. 80-286, September 26, 2000 (*Comments of the CPUC to the Joint Board Recommended Decision*)

⁵ Reply Comments of the People of the State of California and the California Public Utilities Commission, Joint Board Recommended Decision, CC Docket No. 80-286, October 10, 2000 (*Reply Comments of the CPUC to the Joint Board Recommended Decision*)

⁶ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 01-162, 2001 WL 540481 (released May 22, 2001) (*Report and Order*).

III. FIVE OF THE SEVEN ‘GLIDE PATH’ OPTIONS ARE NOT VIABLE, AS DISCUSSED IN CALIFORNIA’S PRIOR COMMENTS FILED IN THIS DOCKET

Option 1 seeks to extend the freeze. The glide path paper makes an excellent case for the 'changing environment' due to technological, economic, legal, jurisdictional and political changes.⁷ However, extending the freeze is not only inadequate but also inappropriate as a policy response to these changes. California had opposed even an interim freeze on grounds that the harm to ratepayers and competition from a freeze, however short-lived, outweighs any perceived benefits. This point has been explained in great detail in prior comments,⁸ and for the reasons stated therein, California recommends that the FCC not consider this option.

Option 2 proposes fixed allocators for traffic-sensitive costs. Even the fixed allocators for non-traffic sensitive loop costs have been subjected to debate and scrutiny in this docket.⁹ The rapid growth of new services and large network investments undertaken to provision these services call for a more flexible separations mechanism.¹⁰ Extending the use of fixed allocators to traffic-sensitive costs would make the separations mechanism rigid and less responsive to the changing environment, and hence the CPUC urges the FCC not to consider this option.

Option 3 proposes the 'total company revenue requirement' method adopted for smaller carriers. Implementing this option is tantamount to partially delegating to the

⁷ Paper at 4-7

⁸ Comments of the CPUC to the Joint Board Recommended Decision at 4-18 and Reply Comments of the CPUC to the Joint Board Recommended Decision at 4-8.

⁹ Reply Comments of the CPUC to the Joint Board Recommended Decision at 13-14.

¹⁰ Comments of the CPUC to the Joint Board Recommended Decision at 15-16

ILECs the determination of how to separate costs. California has argued against such an unintended consequence, as it would undermine the efficacy of both price cap and rate-of-return regulation.¹¹

Options 6a and 6b call for an end to separations by establishing one jurisdiction either at the State or at the Federal level. California, however, has argued that there is a need for jurisdictional separations as a matter of law and policy during the transition to competition.¹²

Option 7 calls for an end to separations given the increasing competition in the industry. The paper also asks for a set of minimum conditions that should precede ending separations for a company. The CPUC agrees with the paper's observation that this option requires a degree of competition that does not yet exist in the general telecommunications marketplace. The CPUC also is of the opinion that developing a list of minimum conditions that precede deregulation and competition is not an adequate regulatory response because, among other things, compliance may be difficult to monitor and hence enforce. California has also argued that a jurisdictional separations process is necessary as a matter of policy.¹³ The CPUC respectfully submits that it would be a more constructive use of time in this docket to focus on developing the details of new, flexible and simpler separations mechanisms consistent with the criteria outlined in the NPRM. Options 4 and 5 take positive steps toward this short-term goal during the transition to full competition.

¹¹ See CPUC-NPRM comments at 9.

¹² See CPUC-NPRM comments at 2-7.

¹³ See CPUC-NPRM comments at 5-7.

IV. THE FCC SHOULD FOCUS ON 'GLIDE PATH' OPTIONS 4 AND 5

Option 4 suggests a redesign of separations to account for competition and developments in packet-switched data network technology. This option is a rational response to the changing environment outlined in the paper. The paper, however, only proposes a general methodology and leaves the details to a proposed project to be undertaken at an unspecified date. A project undertaken to establish such a separations system has the potential to meet the criteria of competitive neutrality and consistency with the principles of cost causation. However, it is likely to be a complex endeavor and the resulting mechanism may not necessarily meet the criterion of simplicity.

Option 5 proposes a facilities-based separation mechanism. This option is the most appealing to the CPUC because it comes closest to a consolidation of cost categories that California had deemed to be a reasonable transition step toward simplification of the separations process.¹⁴ Nevertheless, it is unclear how a facilities-based separations mechanism would deal with the distinction between the packet-switched data network and the switched network that Option 4 squarely addresses.

In addition, the paper has listed many concerns regarding both Options 4 & 5, which cannot be fruitfully addressed unless the attention of parties is focused on these options.

¹⁴ See CPUC-NPRM comments at 8-9.

V. RECOMMENDATIONS

The CPUC recommends that the FCC focus on Options 4 and 5 as the only viable revisions to the separations process, and conduct further proceedings to flesh out details of these proposals. The other five options are not viable, and the FCC should reject them for the reasons previously given by the CPUC.

Respectfully Submitted,

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